

*ATTACHMENT B*



**To:** Board of Prison Commissioners  
**From:** ACLU of Nevada  
**Date:** October 14, 2008  
**Re:** Revised AR 610

Dear Governor Gibbons, Attorney General Mastro, and Secretary Miller,

Below please find the ACLU of Nevada's comments on AR 610. If you should have any concerns or questions about this testimony, please do not hesitate to contact me. Thank you very much for your time and attention to this important matter of constitutional import.

Sincerely,

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## AR 610

The ACLU of Nevada recognizes that NDOC has revised Section 610.03(1) of Administrative Regulation 610 so that it now allows for HIV positive inmates to participate in a work or housing assignment/activity outside the main security area on a "case by case basis." This revised policy is an improvement over the old policy that imposed a blanket ban on HIV+ individual's access to alternative programs, which was blatantly discriminatory and unconstitutional. Despite this revision, we remain concerned that the new regulation does not explicitly prohibit discriminatory exclusion from alternative programs based on an individual's HIV status.

At the last Prison Board meeting, Director Skolnik announced an interim directive to NDOC staff instructing them that HIV+ status would no longer preclude inmates from participation in programs such as work release. Subsequent to this announcement, an HIV+ inmate was found eligible for house arrest despite his HIV status. More recently, however, an inmate was denied access to work release, based solely on his HIV+ status.

These two cases illustrate that the discretion allowed under the new regulation leaves open the possibility that HIV+ inmates will continue to suffer discrimination in access to work and housing assignments. We therefore urge NDOC to revise this regulation, so that HIV+ individuals' access to such programs is only restricted where there is a specific, fact-based reason to do so.

While we commend the NDOC for its efforts to improve its policies towards HIV+ inmates with regard to program access, there are several areas of AR 610 that are highly problematic from a legal, medical, and correctional management perspective, including the following:

- Several areas of the regulation appear to condone an inmate's placement in segregation based on his/her HIV status;
- The definition of "high risk activity" is far too broad and standardless. It does not define "sexual activity." "Battery" which might simply mean that an inmate was involved in a fight, is not a "high risk activity" for HIV transmission;
- The regulation does not provide adequate confidentiality protections for HIV+ individuals in a correctional setting; and
- There are insufficient safeguards for inmate participation in clinical trials.

These are some of the areas that the ACLU believes need to be reconsidered in order to create regulations for HIV+ inmates that comply with the law and national standards.

We appreciate that NDOC is trying to move in the right direction. We look forward to working together in the future to formulate a policy that protects all prisoners, staff and the public.